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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	October 27, 2011)	
)	Case No.: PSH-12-0003
_____)			

Issued: May 2, 2012

Hearing Officer Decision

Richard A. Cronin, Jr., Hearing Officer:

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (“the Individual”) to hold a Department of Energy (DOE) access authorization.¹ This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual’s suspended DOE access authorization should be restored. For the reasons detailed below, I find that the DOE should not restore the Individual’s access authorization at this time.

I. BACKGROUND

In September 2011, the Individual, a security clearance holder, was arrested for Driving While Intoxicated (DWI) and subsequently reported the arrest to the Local Security Office (LSO) at the DOE Facility where he worked. DOE Exhibit (Ex.) 19. Neither a September 2011 personnel security interview (PSI) nor a DOE-Contractor Psychologist’s (DOE Psychologist) examination and evaluative report of the Individual resolved the security concerns raised by his 2011 DWI arrest. Consequently, the LSO informed the Individual, in a January 2011 notification letter (Notification Letter), that derogatory information existed which raised security concerns under 10 C.F.R. § 710.8(h), (j), and (l) (Criteria H, J, and L, respectively) and that his security clearance was suspended. Ex. 1. The Notification Letter also informed the Individual that he was entitled to a hearing before a Hearing Officer in order to resolve the security concerns. *Id.*

¹ Access authorization, also known as a security clearance, is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5.

The Individual requested a hearing on this matter. At the hearing, the DOE counsel introduced 29 exhibits into the record (Exs. 1-29) and presented the testimony of one witness, the DOE Psychologist. The Individual presented his own testimony, as well as the testimony of a psychologist (Individual's Psychologist), his girlfriend (Girlfriend), his mother, and six other witnesses who had served with the Individual in the military or had worked with the Individual at the DOE facility. *See* Transcript of Hearing, Case No. PSH-12-0003 (hereinafter cited as "Tr"). The Individual additionally submitted four exhibits (Exs. A-D) into the record.

II. REGULATORY STANDARD

The regulations governing the Individual's eligibility for access authorization are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The regulations identify certain types of derogatory information that may raise a question concerning an individual's access authorization eligibility. 10 C.F.R. § 710.10(a). Once a security concern is raised, the individual has the burden of bringing forward sufficient evidence to resolve the concern.

In determining whether an individual has resolved a security concern, the Hearing Officer considers relevant factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. 10 C.F.R. § 710.7(c). In considering these factors, the Hearing Officer also consults adjudicative guidelines that set forth a more comprehensive listing of relevant factors. *See* Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House) (the Adjudicative Guidelines).

Ultimately, the decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. 10 C.F.R. § 710.7(a). In order to reach a favorable decision, the Hearing Officer must find that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id. See generally Dep't of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (*Egan*) (the "clearly consistent with the interests of national security" test indicates that "security clearance determinations should err, if they must, on the side of denials").

III. FINDINGS OF FACT AND ANALYSIS

A. Whether the LSO Properly Invoked Criteria J, K, and L

1. Alcohol-Related Arrests and 2011 Report

The facts of this case are essentially undisputed. Tr. at 164-66. The Individual has a history of seven alcohol-related arrests during the period 1998 through 2011, including arrests for DWI in

2002 and 2011 and three arrests involving physical altercations after consuming alcohol.² Ex. 29 at 74-75, 107, 137-140. In PSIs conducted in 2008, 2010, and 2011, the Individual admitted that he had either consumed alcohol or was intoxicated prior to all of the arrests except a 2001 arrest for being a Minor in Possession of Alcohol. Ex. 26 at 25-26, 33-34, 43, 47-49, 54-56, 67, 69-76; Ex. 28 at 56-67, 77-86, 103, 113-14; Ex. 27 at 50-57.

In November 2011, the DOE Psychologist performed a psychological assessment of the Individual concerning his alcohol misuse and issued a report (Report). Ex. 3 at 1; Ex. 13. In the Report, the DOE Psychologist noted that, although the Individual had significant periods of moderate alcohol consumption (three to four beers over three to four hours), the Individual's pattern of alcohol consumption was "episodically heavy" ("binge drinking") and resulted in legal difficulties. Ex. 13 at 8. Given the Individual's admission that he consumed significant amounts of alcohol five or six times a year, a pathological use of alcohol, the DOE Psychologist determined that the Individual suffered from Alcohol Related Disorder, Not Otherwise Specified (NOS). Ex. 13 at 7-8. Further, the Individual's ability to tolerate large quantities of alcoholic drinks to a point of disorientation was sufficient evidence to conclude that the Individual's judgment and reliability were "uncertain." Ex. 13 at 7-8.

2. The Associated Security Concerns

Criterion H concerns information that a person has "an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist causes, or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). It is well established that "certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness." Adjudicative Guidelines, Guideline I. Conduct involving such psychological conditions can raise questions about an individual's ability to protect classified information. *Personnel Security Hearing*, Case No. PSH-11-0010 (March 1, 2012) (*PSH-11-0010*) (Alcohol Related Disorder, NOS, found to raise security concerns under Criterion H).³ Given the DOE Psychologist's conclusion that the Individual suffers from Alcohol Related Disorder, NOS, a condition that could cause a defect in judgment or reliability, Ex. 4 at 10, I find that the LSO properly invoked Criterion H.

Criterion J refers to information indicating that an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(h). Excessive alcohol consumption raises a security concern because it can lead to questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. See Adjudicative Guidelines, Guideline G; *PSH-11-0010*, *slip op.* at 4. Although the DOE Psychologist did not make a final diagnosis of either Alcohol Dependence or Alcohol Abuse, Ex. 13 at 7-8, the DOE Psychologist noted that during two periods in the

² The Individual has been arrested for: Criminal Mischief (1998); Minor in Possession of Alcohol (2001); Disorderly Conduct (2001); DWI (2002); Assault Causing Bodily Injury (2007); Assault by Contact (2010); and DWI (2011).

³ Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

Individual's life, 1995-1998 and 2000-2002, the Individual would have been properly diagnosed as suffering from Alcohol Abuse. Ex. 13 at 8. Given these findings, I find that the LSO properly invoked Criterion J.

Criterion L concerns information tending to show that an individual is "not honest, reliable, or trustworthy, or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l). Criminal conduct calls into question a person's ability or willingness to comply with laws, rules, and regulations. Adjudicative Guidelines, Guideline J; *Personnel Security Hearing*, Case No. TSO-1111 (January 25, 2012). Given the information indicating that the Individual has recently been arrested for DWI in 2011, and has been arrested on a number of occasions from 1998 through 2010, the LSO had sufficient grounds to invoke Criterion L.

B. Whether the Individual Has Mitigated the Security Concerns

With regard to the issue of mitigation, I will consider the Criteria H, J and L concerns together. The Criteria H and J concerns both arise from the Individual's misuse of alcohol. The Criterion L derogatory information described in the Notification Letter consists of the Individual's various arrests, almost all of which were alcohol-related.⁴

The Individual's non-expert witnesses testified as to the Individual's excellent military service, his stellar performance as an employee at the DOE facility and their trust in the Individual's reliability and judgment. Tr. at 15-17, 33-35, 39-42, 97-99, 109-10, 115-18, 133-34. As to the Individual's prior history of alcohol consumption, they testified that the Individual, especially when he was younger, would consume alcohol to excess on various occasions but otherwise consumed moderate amounts of alcohol. Tr. at 13-14, 41-43, 49-52, 66-70, 72-73, 76-77, 105-06, 138-42, 146-50, 160-61. The witnesses also testified as to the dramatic impact the Individual's arrest in September 2011 had on him. Tr. at 21, 33, 84-85. Four witnesses testified that the last time they had observed the Individual consume alcohol was in early September 2011. Tr. at 34, 63, 108-09, 150. The Individual's attendance at the treatment program and Alcoholics Anonymous meetings was also confirmed by the witnesses. Tr. at 26, 58, 77-78, 140, 152.

The Individual testified that the 2011 DWI arrest occurred after a disagreement with his Girlfriend. Tr. at 174; *see* Tr. at 55-56 (Girlfriend's account of disagreement). After he reported his 2011 DWI arrest to his employer and the LSO, he contacted the facility's Employee Assistance Program (EAP) to receive assistance regarding his alcohol misuse. Tr. at 176. Pursuant to the EAP's recommendations, the Individual entered an intensive outpatient treatment program that entailed two-hour meetings for four days a week for five weeks. Tr. at 176-77. During this program, the Individual learned about his alcohol disorder and realized that his use of alcohol could cause problems in his life. Tr. at 177-78. The Individual is now attending

⁴ Both the DOE Psychologist and the Individual's Psychologist testified that the Individual does not have any characterological problem that would lead the Individual to commit criminal activities in the absence of alcohol. *See* Tr. at 276 (Individual's Psychologist); Tr. at 281-82 (DOE Psychologist's opinion that the Individual is morally "very substantial").

Alcoholics Anonymous (AA) meetings and has a sponsor.⁵ Tr. at 196, 199. The program also gave him the tools to use to ensure that he would not use alcohol in the future. Tr. at 179. The Individual testified that he completed the treatment program in October 2011 and currently participates in the program's "aftercare" program. Tr. at 179-81. His last consumption of alcohol occurred on the morning of September 3, 2011, and, as of the date of the hearing, the Individual has been abstinent for 201 days. Tr. at 179.

The Individual's Psychologist testified as follows concerning the Individual's treatment and prognosis. She has treated the Individual during the intensive outpatient program and on an individual basis. Tr. at 245. When the Individual entered the treatment program, he suffered from Alcohol Abuse. Tr. at 245. However the Individual no longer meets the criteria for such a diagnosis. Tr. at 245-46. The Individual's history of alcohol misuse can be described as "binge drinking." Tr. at 246. The Individual had a positive response to the treatment program and participated fully in discussions. Tr. at 250. The Individual's Psychologist noted the Individual's increasing conviction that he should not use alcohol ever again. Tr. at 255. In her opinion, the Individual's prognosis is "very good" and the Individual's changes with regard to alcohol will continue. Tr. at 251, 269. The Individual's Psychologist concluded that she is very confident with regard to the Individual's rehabilitation from his alcohol problem. Tr. at 279.

The DOE Psychologist testified that the testimony confirmed his prior opinion regarding the Individual's good overall morals and psychological health. Tr. at 282. The DOE Psychologist believes that the Individual now realizes he has an alcohol problem. Tr. at 282-83. However, the DOE Psychologist believes that the Individual's current abstinence may be at risk because of the nature of the Individual's relationship with his Girlfriend. The DOE Psychologist noted that the Individual's 2011 DWI was triggered by an argument with his Girlfriend and that the Individual and his Girlfriend have already experienced a separation of over a year in the past because of relationship difficulties. Tr. at 286; *see* Ex. 13 at 4. Consequently, the DOE Psychologist does not believe that the Individual has fully addressed the issue of his relationship with his Girlfriend as being a possible trigger for the problematic consumption of alcohol.⁶ Tr. at 284-85. The DOE Psychologist also found that the fact that the Individual was unable to contact his sponsor the night before the hearing in order to arrange for his testimony indicated that he did not have a close relationship with his sponsor. Tr. at 289.

The DOE Psychologist also testified that, because there are no "good treatment protocols" to use in cases of binge drinking, the only method to determine rehabilitation is the passage of time. Tr. at 288. Consequently, given the information before him, the DOE Psychiatrist opined that, until the Individual has demonstrated 12 months of abstinence, he could not conclude that the Individual had demonstrated adequate evidence of rehabilitation or reformation. Tr. at 290.

All of the evidence leads me to find that the incidents giving rise to the Notification Letter are related to the problematic use of alcohol, rather than any character flaw in the Individual.

⁵ The Individual was not able to contact his sponsor the night before the hearing to arrange for the sponsor's testimony at the hearing. Tr. at 199. The sponsor did submit a statement after the hearing attesting to the Individual's work on the 12-step AA program and recommending that the Individual's clearance be restored. Ex. D at 2.

⁶ The DOE Psychologist recommended that the Individual and his Girlfriend enter into couples therapy. Tr. at 296.

Indeed, the testimony supports a conclusion that the Individual has an exemplary record as an employee and that the Individual's military service to the nation is beyond reproach. Ex. C (Individual's military fitness report). Accordingly, the only issue here is whether the Individual has demonstrated reformation and rehabilitation from his sporadic excessive use of alcohol – binge drinking. As discussed above, the Individual had been abstinent and engaged in a recovery activities for over six months at the time of the hearing. The difference in opinion of the two experts concerns how much abstinence is needed to provide adequate evidence of rehabilitation. Both experts have testified that, with regard to binge drinking, there are no established protocols or standards for treatment of binge drinking. Tr. at 271 (Individual's Psychologist testimony that there are few studies on the treatment of binge drinkers); Tr. at 288 (DOE Psychologist testimony regarding treatment protocols). The high standard required to establish eligibility for a security clearance argues that the DOE Psychologist's 12-month period of abstinence should be required in this case to establish rehabilitation. *Egan*, 484 U.S. at 531; 10 C.F.R. §710.27. Further, the two unfavorable factors noted by the DOE Psychologist, the AA sponsor's apparent lack of availability and possible future relationship difficulties between the Individual and his Girlfriend, also argue against a shorter period of required abstinence. While I believe that the Individual will successfully complete a 12-month period of abstinence, I cannot find that, as of the date of the hearing, he has presented sufficient evidence of rehabilitation or reformation to resolve the concerns raised by his past misuse of alcohol under Criteria H, J, and L.

IV. CONCLUSION

Upon consideration of the entire record in this case, I find that there was sufficient evidence to raise doubts regarding the Individual's eligibility for a security clearance under Criteria H, J, and L of the Part 710 regulations. I also find that the Individual has not presented sufficient information to resolve the concerns raised by the Criteria H, J, and L derogatory information. Therefore, I cannot conclude that restoring the Individual's suspended access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I find that the DOE should not restore the Individual's suspended access authorization at this time.

The parties may seek review of this Decision by an Appeal Panel, under the regulation set forth at 10 C.F.R. § 710.28.

Richard A. Cronin, Jr.
Hearing Officer
Office of Hearings and Appeals

Date: May 2, 2012